

John G. McCarthy (JM-2635)  
BAINTON McCARTHY LLC  
*Attorneys for Plaintiff*  
English Boiler & Tube Inc.  
26 Broadway, Suite 2400  
New York, New York 10004  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ENGLISH BOILER & TUBE, INC., :  
 : 08 Civ. 3605 (JGK)  
Plaintiff, : ECF Case  
 :  
- against - : **REQUEST FOR ENTRY OF**  
 : **DEFAULT PURSUANT TO**  
OPTIMIRA ENERGY, INC., : **FEDERAL RULE OF CIVIL**  
 : **PROCEDURE 55(a)**  
Defendant. :  
-----X

Upon the annexed Declaration of John G. McCarthy, executed on May 15, 2008,  
and pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, Plaintiff English Boiler &  
Tube, Inc. respectfully requests that the Clerk of this Court enter the Default of Defendant  
Optimira Energy, Inc. in the form attached hereto.

Dated: New York, New York  
May 15, 2008

BAINTON McCARTHY LLC

By: /s/ John G. McCarthy  
John G. McCarthy (JM-2635)

*Attorneys for Plaintiff*  
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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

|                              |   |                               |
|------------------------------|---|-------------------------------|
| -----X                       |   |                               |
| ENGLISH BOILER & TUBE, INC., | : | 08 Civ. 3605 (JGK)            |
|                              | : | ECF Case                      |
| Plaintiff,                   | : |                               |
|                              | : | <b>DECLARATION OF</b>         |
| - against -                  | : | <b>JOHN G. McCARTHY IN</b>    |
|                              | : | <b>SUPPORT OF REQUEST FOR</b> |
| OPTIMIRA ENERGY, INC.,       | : | <b>ENTRY OF DEFAULT</b>       |
|                              | : |                               |
| Defendant.                   | : |                               |
| -----X                       |   |                               |

JOHN G. McCARTHY, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the bar of this Court and the firm of Bainton McCarthy LLC, attorneys for Plaintiff English Boiler & Tube, Inc. (“English Boiler”).

2. I make this declaration based upon my personal knowledge in support of English Boiler’s request pursuant to Rule 55(a) of the Federal Rules of Civil Procedure (“Rule 55”), that the Clerk of the Court enter the default of Defendant Optimira Energy, Inc. (“Optimira”).

3. According to the records of the New York Secretary of State, Optimira is a corporation organized under the laws of the State of Delaware, maintains its principal place of business in New York, New York and is licensed to do business in New York.

4. According to the records of the New York Secretary of State, Optimira’s registered agent for service of process is CT Corporation.

5. This action was commenced on April 15, 2008, by the filing of the Complaint. (Docket No.: 1). Copies of Summons and the Complaint were served on April 16, 2008, on Optimira by personal delivery to its registered agent CT Corporation. Proof of such service was filed with this Court on May 8, 2008. (Docket No. 3.)

6. David Fuselier, the chief executive officer of Optimira, contacted me by telephone and by e-mail after he received the summons and complaint.

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 and the holding in *Neumann v. Iovino*, 06 Civ. 11367 (DC), 2007 U.S. Dist LEXIS 50374 (S.D.N.Y. July 11, 2007). Venue is proper in this district pursuant to 28 U.S.C. § 1391. Moreover, the agreement at issue in this lawsuit designates this Court as the forum for any lawsuit involving it.

8. This Court has personal jurisdiction pursuant to CPLR 301 over Optimira.

9. English Boiler's Complaint seeks affirmative relief against Optimira.

10. Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(i), Optimira had 20 days from the date of service to respond to the Complaint.

11. Accordingly, Optimira's deadline for serving a responsive pleading was Tuesday, May 6, 2008. On May 9, 2008, I told Mr. Fuselier that English Boiler would not request that the default be entered until after noon on May 14, 2008.

12. Optimira has not answered or otherwise responded to the Complaint and the extended time for it to do so has expired. As of 11:30 a.m. on May 15, 2008, we have not received any further communication from Optimira.

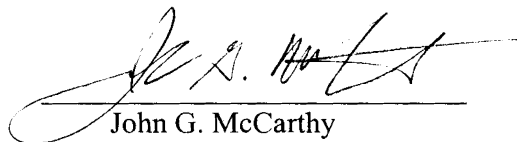
13. Rule 55 states:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

14. Accordingly, the Clerk **must** enter the default of Optmira.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2008.



John G. McCarthy

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ENGLISH BOILER & TUBE, INC., :  
 : 08 Civ. 3605 (JGK)  
Plaintiff, : ECF Case  
 :  
- against - : **CLERK'S CERTIFICATE**  
 : **OF DEFAULT**  
OPTIMIRA ENERGY, INC., :  
 :  
Defendant. :  
-----X

I, J. MICHAEL McMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on April 15, 2008 with the filing of a summons and complaint, a copy of the summons and complaint was served on defendant on April 16, 2008 by serving registered agent CT Corporation System, Sattie Jairaf, process inspector, by hand delivery at 111 8<sup>th</sup> Avenue, New York, New York, and proof of such service thereof was filed on May 8, 2008.

I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to the complaint herein. The default of the defendant Optimira Energy, Inc. is hereby noted.

Dated: New York, New York  
May \_\_, 2008

**J. MICHAEL McMAHON**  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk